

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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YEMISI AKINYEMI,

Plaintiff,

v.

MICHAEL CHERTOFF, SECRETARY,
DEPARTMENT OF HOMELAND
SECURITY,

Defendant.
-----X

07 CV 4048 (CM) (AJP)

DECLARATION OF DENEISE DUNGEE

I, Dencise Dungee, do hereby state and declare as follows in accordance with the provisions of 28 U.S.C. § 1746:

1. I am a Deputy Chief Officer with U.S. Customs and Border Protection ("CBP"), U.S. Department of Homeland Security ("DHS"), and am presently assigned to the Port of Newark Liberty International Airport ("Newark Airport"), in Newark, New Jersey. My primary duties and responsibilities as a Deputy Chief Officer are supervising CBP officers in all aspects of passenger processing, in addition to handling a variety of administrative matters.

2. The statements herein are based upon my personal knowledge as well as upon information provided to me in the course of my official duties.

3. In early November 2007, in connection with this litigation, my supervisor, CBP Assistant Area Director ("AAD") Joseph Rivera, asked me to search for CBP Employee Proficiency Reviews for employee Elba Riley (formerly Elba Mendez). The Employee Proficiency Reviews are recorded on CBP Form 188A, and are prepared for non-supervisory employees once per fiscal year. A CBP fiscal year runs from October 1st through September

30th. 4. CBP first level supervisors at the Newark ports maintain a folder for each officer directly under their supervision. When an officer is transferred to a new supervisor, the old supervisor transfers the officer's folder to the new supervisor. Employee Proficiency Reviews are kept in the regular course of business in these folders maintained by the supervisors ("supervisory folder").

5. Upon information and belief, since being hired by CBP, Elba Riley has worked for CBP at three locations: the Newark Seaport as a CBP Officer; Newark Airport as a CBP Officer; and 1100 Raymond Blvd. Newark, New Jersey, as an Import Specialist. I consulted all three locations in search of her Employee Proficiency Reviews.

6. On or about November 6, 2007, I contacted Supervisory Customs and Border Protection Officer ("SCBPO") Santiago Villa at the Newark Seaport via electronic mail to request Elba Riley's Employee Proficiency Reviews for the period of time she worked as a CBP Officer at Newark Seaport.

7. On or about November 6, 2007, SCBPO Villa responded to me via electronic mail, stating that SCBPO Brian Dalrymple had supervised Elba Riley while she worked at the Seaport, but that SCBPO Dalrymple was no longer with CBP. SCBPO Villa also stated that he had asked SCBPO Rosario Lobello, who took over SCBPO Dalrymple's team after SCBPO Dalrymple left CBP, whether Elba Riley's supervisory folder was in SCBPO Lobello's possession. According to SCBPO Villa, SCBPO Lobello had replied in the negative. SCBPO Villa also informed me that he believed that Elba Riley's supervisory folder had been forwarded to Newark Airport upon her transfer to Newark Airport. I concluded, therefore, that Newark Seaport was not in possession of Elba Riley's Employee Proficiency Reviews.

8. While assigned to work at Newark Airport, Elba Riley was supervised by SCBPO

Robert Carle and SCBPO Michael Borg. In mid-November 2007, I asked SCBPO Robert Carle if he was in possession of Elba Riley's supervisory folder. SCBPO Carle replied in the negative. SCBPO Borg is presently on a temporary duty assignment abroad, so I requested that SCBPO Weston Daniel search through SCBPO Borg's supervisory files for Elba Riley's file. SCBPO Daniel informed me, following a search of SCBPO Borg's supervisory files, that Elba Riley's supervisory folder could not be found. I concluded, therefore, that Newark Airport was not in possession of Elba Riley's Employee Proficiency Reviews.

9. On or about November 8, 2007, I contacted Michael Choma, a CBP Management and Program Analyst, at 1100 Raymond Blvd. in Newark, New Jersey via electronic mail to request whether that office was in possession of Elba Riley's Employee Proficiency Reviews, since she is now assigned to that office as an Import Specialist.

10. I have been informed that, on or about November 9, 2007, Michael Choma forwarded a folder maintained at 1100 Raymond Blvd. for Elba Riley directly to the Office of the Associate Chief Counsel, CBP, for review, but that it contained a copy of only one Employee Proficiency Review for fiscal year 2007 (covering period October 24, 2006, to September 30, 2007).

11. I have also been informed that, on or about the week of November 5, 2007, a copy of Elba Riley's Employee Proficiency Review for fiscal year 2005 (covering period October 1, 2004, to September 30, 2005) was located in a folder maintained by CBP's Office of Labor and Employee Relations ("LER") for the New York/New Jersey area, but that no other evaluations were contained in the LER folder.

12. Based on the forgoing, CBP has searched for Elba Riley's fiscal year 2006 Employee Proficiency Review in the locations it could reasonably be expected to be kept in the

regular course of business, and it has not been found.

13. Based on the forgoing, Elba Riley's Employee Proficiency Review for fiscal year 2006 could not be located.

I declare under penalty of perjury that the foregoing is true and correct based on information, knowledge, and belief.

Executed on January 18, 2008


DENEISE DUNGEE



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No. pages (including cover sheet): 5

Date sent: January 24, 2008

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